

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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PAUL T. PAPADAKIS,
:
PLAINTIFF
:
VS.
:
CSX TRANSPORTATION,
:
DEFENDANT
-----X

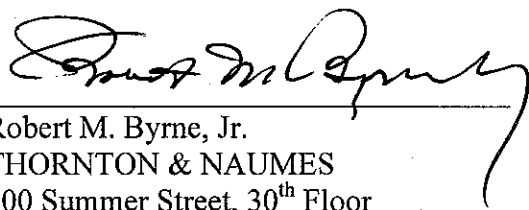
CIVIL ACTION
NO.: 04-30189-MAP

**PLAINTIFF'S REPLY TO CSX TRANSPORTATION'S MOTION FOR AN ORDER FOR
PLAINTIFF TO SUBMIT TO A PHYSICAL EXAMINATION AND TO EXTEND
DISCOVERY.**

Now comes the Plaintiff in reply to the Defendant's Motion for an Order compelling the Plaintiff to submit to a physical examination pursuant to Fed. R. Civ. P. 35(b) and to extend discovery.

For reasons more fully stated in Plaintiff's Memorandum of Law submitted herewith the Plaintiff says that the Defendant's Motion to Extend the Expert Disclosure deadline and discovery should be denied.

PAUL T. PAPADAKIS
By his attorney,



Robert M. Byrne, Jr.
THORNTON & NAUMES
100 Summer Street, 30th Floor
Boston, MA 02110
(617) 720-1333
Attorney for Plaintiff
B.B.O. #068620

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----X	:	
PAUL T. PAPADAKIS,	:	
	:	CIVIL ACTION
PLAINTIFF	:	NO.: 04-30189-MAP
VS.	:	
	:	
CSX TRANSPORTATION,	:	
	:	
DEFENDANT	:	
-----X		

PLAINTIFF'S MEMORANDUM OF LAW ADMITTED IN RESPONSE TO THE
DEFENDANT'S MOTION FOR AN ORDER TO COMPEL AND EXTENSION OF
DISCOVERY.

The Defendant has filed a Motion to Compel the Plaintiff to submit to a medical examination pursuant to the provisions of Fed. R. Civ. P. 35(b) and for an order extending the discovery period. In response thereto, the Plaintiff attaches hereto, a copy of the Court's Scheduling Order (Exhibit A). Which provides in part that all paper discovery was to have been completed by March 1, 2005 and all trial experts to be called by the Defendant be identified with disclosures by October 14, 2005. On September 12, 2005 the Defendant's Counsel approached Plaintiff seeking Plaintiff's agreement to submit to a medical examination by Dr. Feldman. Copy of letter confirming conversation attached hereto as (Exhibit B). The following day, the Plaintiff confirmed a cooperative agreement to submit to a medical examination (Exhibit C). Nearly three weeks passed when for the first time on September 29, 2005, the Defendant, provided the Plaintiff with proposed dates for the examination (Exhibit D). All of the dates offered by the Defendant are well beyond the expert disclosure dates set forth in the

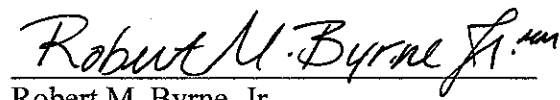
scheduling order. As it is Plaintiff's understanding that Dr. Feldman may be a trial expert and in light of the Court's recent admonition in the matter of the Defendant's Motion for Reconsideration of an Order Compelling the Defendant to respond to the Plaintiff's Rule 36 Request for Admissions, the Plaintiff advised Counsel for the Defendant that the Plaintiff could not by agreement present himself for examination beyond the dates provided in the scheduling order, and suggested that the Defendant should seek relief pursuant to motion.

At the time, Plaintiff agreed to submit to the medical examination, it was anticipated that it would be conducted in sufficient time for Plaintiff to obtain the expert disclosures required by Fed. R. Civ. P. 26(a)(2). Moreover, the proposed dates for conducting the medical examination in late October or early November would allow the Plaintiff insufficient time to prepare for and conduct a deposition of Dr. Feldman as provided by item 7 of the scheduling order.

Finally, the Plaintiff objects to the Defendant's Motion to extent that it can be construed as requesting a general extension of discovery and/or general extension for the deadline for the Defendant to disclose experts other than Dr. Feldman.

For the foregoing reasons the Plaintiff objects to the Defendant's Motion for and Order to Compel a Fed. R. Civ. P. 35 examination and extension to discovery. The Plaintiff will however, submit to a medical examination if the Defendant will agree that Dr. Feldman will not be called as a Fed. R. Civ. P. 26(a)(2) witness.

PAUL T. PAPADAKIS
By his attorney,


Robert M. Byrne, Jr.
THORNTON & NAUMES
100 Summer Street, 30th Floor
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(617) 720-1333
Attorney for Plaintiff
B.B.O. #068620

Certificate of Service

I hereby certify that on October 5, 2005, I served the foregoing Plaintiff's Reply to Defendant, CSX Transportation, Inc.'s Motion for an Order for Plaintiff to Submit to a Physical Examination and to Extend Discovery and Memorandum of Law, by electronic filing to:

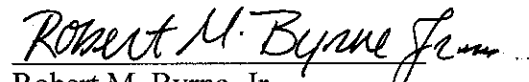

Robert M. Byrne, Jr.

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PAUL PAPADAKIS,)	
)	
Plaintiff)	
)	
v.)	Civil Action No. 04-30189-MAP
)	
)	
CSX TRANSPORTATION,)	
)	
Defendant)	

SCHEDULING ORDER
November 22, 2004

NEIMAN, U.S.M.J.

The following schedule was established at the initial scheduling conference this day:

1. The parties shall complete their automatic disclosures by November 29, 2004.
2. Motions to amend and/or supplement the pleadings, including motions to add parties, shall be filed by February 28, 2005.
3. All written discovery shall be completed by March 31, 2005.
4. Non-expert depositions shall be completed by September 30, 2005.
5. Plaintiff shall designate and disclose information regarding his trial experts as required by FED. R. CIV. P. 26(a)(2) by August 31, 2005.
6. Defendant shall designate and disclose information regarding its trial experts as required by FED. R. CIV. P. 26(a)(2) by October 14, 2005.

7. All expert depositions shall be completed by December 30, 2005.
8. Counsel shall appear for a case management conference on January 5, 2006, at 10:00 a. m. in Courtroom Three.

IT IS SO ORDERED.

DATED: November 22, 2004

/s/ Kenneth P. Neiman
KENNETH P. NEIMAN
U.S. Magistrate Judge

EXHIBIT B

FLYNN & ASSOCIATES, P.C.
ATTORNEYS AT LAW

MICHAEL B. FLYNN*
RICHARD A. DAVIDSON, JR.
LORI A. WIRKUS*
JOHN E. YOUNG, IV
VALERIE A. MURPHY

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September 12, 2005

Via Facsimile and U. S. Mail

Robert M. Byrne, Jr.
Thornton & Naumes LLP
100 Summer Street
30th Floor
Boston, MA 02110

RE: Paul T. Papadakis v. CSX Transportation, Inc.
U.S.D.C., C.A. No.: 04-30189-MAP

Dear Bob:

The purpose of this letter is to memorialize our telephone conversation of Wednesday, September 7, 2005. I requested that your client submit to an IME with Dr. Feldman. You told me that you would think about it and get back to me. I await your response in this regard. Please be advised that if you do not agree to the IME we will file a motion to compel one.

With reference to postponing the deposition of Ernest Gailor previously scheduled for September 15, 2005, I am in receipt of your letter of September 9, 2005 in which you suggest October 11, 2005 as an alternate date. Since this date coincides with my schedule I have enclosed a *Re-Notice of Deposition* for October 11, 2005 at 10:30 AM at our offices. In addition, we have agreed that we will pay what is required under the rules for this deposition.

Further, we demand that you produce a copy of Mr. Gailor's complete file on this case by Friday, October 7, 2005 for our review. Production of these documents by October 7, 2005 is a pre-requisite to the deposition being taken as scheduled.

Robert Byrne, Esq.
September 13, 2005
Page 2

Thank you for your attention to this matter.

Sincerely,



Michael B. Flynn

MBF/peg
Enclosure

cc: Gary Baker
Valerie A. Murphy, Esq.

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EXHIBIT C

COPY

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Of Counsel
Elizabeth M. Shost
Admitted in NY & PA only

September 13, 2005

Michael B. Flynn, Esquire
Flynn & Associates, PC
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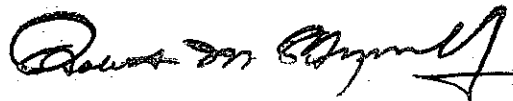
RE: Paul T. Papadakis vs. CSX Transportation, Inc.
United District Court/Massachusetts C.A. No.: 04-30189-MAP

Dear Attorney Flynn:

This letter serves to confirm that Mr. Paul Papadakis will submit to an IME with Dr. Feldman.

If you have any questions or comments concerning this matter, please do not hesitate to contact me.

Very Truly Yours,



Robert M. Byrne, Jr.

RMB/mm

EXHIBIT D

FLYNN & ASSOCIATES, P.C.

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September 29, 2005

Via Facsimile and U. S. Mail

Robert M. Byrne, Jr.
Thornton & Naumes LLP
100 Summer Street
30th Floor
Boston, MA 02110

RE: Paul T. Papadakis v. CSX Transportation, Inc.
U.S.D.C., C.A. No.: 04-30189-MAP

Dear Bob:

Please reference your letter dated September 13, 2005, regarding the *Independent Medical Examination* of Mr. Papadakis. Dr. Feldmann has the following dates available:

1. October 25, 2005, at 11:00 AM
2. November 1, 2005, at 10:00 AM
3. November 8, 2005, at 11:00 AM
4. November 15, 2005, at 10:00 AM

As you are aware, Dr. Feldman's office is located at 110 Lockwood Street, Providence, RI, 02903. Please notify our office as to which date your client is able to attend by the end of day Friday, as Dr. Feldmann cannot hold the above dates for us for more than a few days. Thank you for your attention to this matter.

Sincerely,



Valerie A. Murphy

cc: Gary M. Baker
Michael B. Flynn, Esq.

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